

Organizations that make application to the Department and are determined to be exclusively charitable, religious, or educational receive a tax exemption identification number. Organizations that have secured tax exemption identification numbers from the Department are exempt from Use Tax when purchasing tangible personal property for use in furtherance of organizational purposes, and retailers do not incur Retailers' Occupation Tax on such sales. See 86 Ill. Adm. Code 130.2007. (This is a GIL).

December 21, 1999

Dear Xxxxx:

This letter is in response to your letter dated September 15, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY is a provider of technical equipment coverage for health care facilities. We currently have an account with a hospital in your state for which I have a question.

This hospital holds a tax exemption certificate. When a piece of equipment needs repair, this hospital will call their vendor of choice to fix it. The invoice is billed directly to the hospital. If the repair is covered under the policy the hospital has with COMPANY, the invoice is submitted to COMPANY for payment. COMPANY does not take any part in the purchase of parts or labor that goes into this transaction. We pay the bill, acting as an agent to the hospital. Is this a tax-exempt transaction since COMPANY is acting as an insurance agent to the hospital, or is COMPANY liable for your state sales tax?

Please keep in mind, this is not a maintenance agreement. It is an insurance policy where COMPANY is not performing any of the repairs. We are just trying to eliminate a step in the payment process.

Organizations that qualify as exclusively religious, charitable, or educational can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers ("E" numbers). These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax or Service Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. See 86 Ill. Adm. Code 130.2007. The Department has issued "E" numbers to certain hospitals. Companies selling tangible personal

property to these hospitals or other exempt organizations must be provided with an "E" number for sales to such organizations to be tax exempt.

It is important to note that only sales of tangible personal property invoiced to the exempt organization itself are exempt. Sales made to suppliers or vendors of an exempt entity are generally subject to tax, unless another exemption can be documented.

When a piece of equipment is repaired a sale of service generally occurs. When tangible personal property is transferred to the equipment owner as part of the repair service the transaction is subject to liability under the Service Occupation Tax Act. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of their sales of service. Servicemen incur either Service Occupation Tax (SOT) liability or Use Tax liability in these transactions. The tax consequences depend upon the method used to calculate the liability. Servicemen may calculate their tax base in one of four ways: 1. separately stated selling price; 2. 50% of serviceman's entire bill; 3. SOT on his cost price if he is a registered de minimis serviceman; or, 4. Use Tax on his cost price if he is an unregistered de minimis serviceman. Please see the enclosed copy of 86 Ill. Adm. Code 140.101, the Basis and Rate of the Service Occupation Tax.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. When either of these methods is used by a serviceman who bills a hospital that provides an "E" number, no tax liability is incurred by virtue of the hospital's exempt status.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such registered de minimis servicemen generally collect the corresponding Service Use Tax from customers. However, in cases where such servicemen directly invoice an exempt

hospital no tax liability is incurred based upon the exempt status of the hospital.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. Because unregistered de minimis servicemen themselves incur a Use Tax liability under this method, an exempt hospital would incur no tax liability. The servicemen incur the Use Tax liability even when the sales of service are to an exempt entity because the unregistered de minimis servicemen are the "users" of tangible personal property transferred incident to such sales of service.

The above assumes that all billing is done to the exempt hospital, as stated in your letter. Please note that charges for the transfer of tangible personal property that are billed to a private insurance carrier are generally subject to sales tax in Illinois.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.